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SUPREME COURT, U. S.

No. 581

In the Supreme Court of the United States

OCTOBER TERM, 1970

ARTHUR PANAGIOTOPOULOS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Petitioner, Arthur Panagiotopoulos*, prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit.

Judgment and Opinion of the Court Below.

On July 8, 1970 the Court of Appeals for the Seventh Circuit affirmed the judgment of conviction entered by the United States District Court for the Northern Dis-

* Hereafter petitioner will be referred to as Panos, as he was during the trial and in the Court of Appeals' Opinion. It is much easier that way.

trict of Illinois, Eastern Division. The Opinion is not yet reported, but is appended hereto as Appendix A.

On August 6, 1970, the court denied the petition for rehearing; such order is appended hereto as Appendix B.

Jurisdictional Statement

The jurisdiction of this court is invoked under 28 U.S. Code 1254(1).

Questions Presented for Review

1. Where the issue is one of credibility of the only government witness implicating the petitioner, may a conviction be permitted when the prosecutor accused the petitioner (and his co-defendant brother) with threatening to beat up that witness, where no such evidence was produced in court; and where, in fact, when asked by the prosecutor, that witness said nothing with respect to any supposed threat by petitioner?

2. May a conviction be suffered to stand when a prosecutor is permitted by the court to ask the following prejudicial question upon his promise to the court that he would produce evidence to support the accusation: "Do you also remember at that time telling Steven Latson (the chief government witness) that when these fellows get out of jail, Peter, Arthur and Christ (the defendants) that they would come out and beat him up?" but then fails to live up to his promise to produce evidence supportive of his accusation.

Statement of Facts

Three defendants, Peter Karigiannis and Christ and Arthur Panos, were found guilty of violating 18 U.S.C. 1952, which makes it an offense to travel in interstate commerce to promote extortion. In the language of the

Opinion; "The jury found appellants guilty of travelling from Chicago, Illinois to Milwaukee, Wisconsin with intent to extort $2,000 from Steve Latson in violation of Ch. 38 of the Illinois Revised Statutes, 16-1."

In essence, the evidence for the government showed that Steve Latson, who was petitioner Arthur Panos' former partner in a restaurant business, and both of whom owned and operated restaurants in Chicago, received a telephone call in Chicago from Christ Panos, Arthur's brother, from Milwaukee, Wisconsin. Christ told Latson that his restaurant would be blown up unless he came to Milwaukee by 6:00 p.m. that day. Latson then called Arthur Panos, and they both went to Christ Panos' restaurant in Milwaukee where Christ introduced Latson to Peter Karigiannis, who then made demands to Latson in Arthur Panos' presence, for sums of money to refrain from burning Latson's restaurant down.

Latson arranged to meet with Karigiannis in Arthur Panos' restaurant in Chicago several days later. The money, $2,000, was passed to Karigiannis by Latson in a parking lot outside of petitioner's restaurant in Chicago.

Both Karigiannis and Christ Panos testified at trial. Arthur Panos did not. It was Karigiannis' defense, rejected by the jury, that the money he requested and the money he was paid by Latson was reimbursement for loans theretofore given by him to Latson. Karigiannis admitted the meeting in Milwaukee and in Chicago and the receipt of the money. (He was arrested by F.B.I. agents in the parking lot with the money.)

Thus, a head-on credibility issue was presented to the jury as to the *content* of the Latson-Karigiannis conversation in Milwaukee.

REASONS FOR GRANTING THE WRIT

I.

Petitioner was irremedially prejudiced in his right to a fair trial when the prosecutor suggested, without any proof, that he or his brother, Christ, would harm government witness Latson when they were released from jail.

The issue with respect to the claimed error was squarely presented to the Court of Appeals for the Seventh Circuit. The Opinion nowhere speaks on this claimed grievous error, and accordingly, petitioner was deprived of his right to appellate review.

At trial, petitioner Arthur Panos did not testify; he relied on a total absence of proof against him. Even the Appeals Court Opinion states, "The evidence against Arthur (Panos) was largely circumstantial and created credibility problems for the jury to resolve. It believed the government's witness."

Both of the other two defendants, Christ Panos and Peter Karigiannis, testified. It was the thrust of Karigiannis' defense, supported by Christ Panos, that Karigiannis was collecting money which he had previously loaned to Latson. There were no denials of the fact of conversations; however, there was a difference between Karigiannis and Christ Panos on the one hand, and Latson on the other, as to the content of the conversations. As to that content, there was no government corroboration. Accordingly, the issue was one of credibility of the witness.

Under circumstances such as this,

> "The evidence for the prosecution and that offered by the defense presented to the jury a conflict which

only the jury could resolve. The contradictions which developed and the inferences as to the guilt or innocence of [defendant] sought to be drawn required that no prejudicial evidence be admitted in violation of any rule of law." *United States* v. *Rohalla*, 7 Cir. 369 F.2d 220, 222.

The government prosecutor, Mr. William Cagney, accused the defendants, Arthur and Christ Panos, along with defendant Karigiannis, of threatening to beat up the witness Latson after they got out of jail. (Tr. 566).[1] These prejudicial accusations came about when Mr. Cagney was cross-examining Nick Karigiannis, a cousin of the defendant Peter Karigiannis. Nick was a witness for Peter Karigiannis in support of Peter's testimony that he had loaned Latson the sum of $2,000. Referring to a meeting between the witness Nick Karigiannis and Steve Latson, Nick was asked by the prosecutor.

> "Q. Do you also remember at that time telling Steven Latson that when these fellows got out of jail, Peter, Arthur and Christ, that they would come out and beat him up?
>
> Mr. Calihan: Objection, your honor.
>
> The Court: Well on the same basis—
>
> Mr. Cagney: The same representation, the same conversation.
>
> The Court: All right—go ahead.
>
> Q. And did Steve have to worry about some of the people who weren't going to be in jail, like yourself, who were single?
>
> Mr. Calihan: Same objection.
>
> The Court: Same ruling.
>
> By The Witness: A. Why should he be afraid for me?

[1] "Tr." refers to Transcript of Proceedings of the trial.

By Mr. Cagney: Q. Did you ever tell Steve, Pete had been arrested, when you talked to Steve, he told you what happened, that you were going to go out and beat up Pete?

A. Why should I?

Q. My question was, did you say it, Nick?

A. What should I say?

Q. Well, tell the truth, Nick.

A. I never said anything like that.

Mr. Cagney: I have no further questions of this witness." (Tr. 565-7).

The prosecutor had promised the court that he would produce evidence to support his accusatorial cross-examination (Tr. 565), and upon that promise the court permitted the questions. On rebuttal, Steven Latson was recalled by the government and testified that Nick Karigiannis came to see him after Peter Karigiannis had been arrested. *Not one question was asked Latson by Mr. Cagney purporting to support the accusation made by Mr. Cagney that Arthur and Christ Panos had threatened to beat up Latson when they got out of jail.*

In *Lee Wong Sing* v. *United States*, D.C. Cir. 215 F.2d 680, a co-defendant who had pleaded guilty was called as a defense witness. On cross-examination by the government attorney, he was asked if it were not true that the defendant on trial had paid him $20,000 to plead guilty. The witness denied the assertion and the government did not offer any evidence to rebut his denial. *The court reversed on this ground alone.*

In *Ginsberg* v. *United States*, 5 Cir. 257 F.2d 950, 955, the court reversed because the prosecutor insinuated that he could have produced other evidence. In the case at bar, the prosecutor promised the court he would present evidence supportive of his accusatorial question (Tr. 565-6).

In *United States* v. *Graham*, 6 Cir. 325 F.2d 922, the court reversed a narcotics conviction where the prosecutor intimated by questioning that he would produce evidence by way of rebuttal to support his inference when he asked defendant whether his wife had a needle containing a drug break off in her arm. The Sixth Circuit held, p. 927:

> "He did not do so, although it is fair to assume that the trial judge had in mind a promise of rebuttal even when he overruled defense counsel's objection."

In *Thurman* v. *United States*, 9 Cir., 316 F.2d 205, the court reversed because the prosecutor asked questions insinuating, without proof, that defendant had participated in prior criminal conduct; and in *United States* v. *Perlstein*, 3 Cir., 120 F.2d 276, the court reversed when it found that questions by the prosecutor obviously were intended to leave the speculation with the jury that defendant was involved with two other persons in some vast criminal scheme.

And even in a trial to the court, without a jury, prosecutorial accusations against defendant and his witnesses without rebuttal evidence supportive of denials of the accusations, implicit in the prosecutor's questions were held grounds for reversal. *People* v. *Nuccio*, 43 Ill. 2d 375, 396; 253 N.E. 2d 353 (1969). The court held, p. 364:

> "But there are, it seems to us, limits to the immunity to improper and prejudicial insinuations which judges are presumed to possess."

But the case at bar was before the jury; and the prosecutor was content to let the poison of his unfair insinuation seep to the jury.

The prosecutor's method as here demonstrated was not consonant with essential fairness in accordance with the

right to be tried according to due process of law. While the prosecutor may strike hard blows, "... he is not at liberty to strike foul ones." *Berger* v. *United States*, 295 U.S. 78, 88.

Had the Court of Appeals spoken on the issue and concluded that the claimed error did not prejudice the petitioner, its decision would be in conflict with the holdings of the District of Columbia Circuit, the Third, Fifth, Sixth and Ninth Circuits that under circumstances such as here set out, a defendant was denied his constitutional right to a fair trial. However, the Court of Appeals for the Seventh Circuit ignored the question entirely. It stated:

> "4. The remainder of the points raised go to alleged prejudicial remarks by the prosecutor or the judge and the admissibility of evidence. As to the former in some instances no objection was made at the time; in others the court struck out the statements and instructed the jury not to consider them. In any event we find no statements of such a prejudicial nature that would require a new trial."

But defense counsel did object when the prosecutor asked the prejudicial question accusing petitioner of making a threat to beat up Latson. (Tr. 565-566). The trial court specifically permitted the questions to be asked only upon the prosecutor's promise that he would produce evidence to support his accusatorial cross-examination. (Tr. 565). As to Arthur and Christ Panos, he never did.

We can only point out the objections made at Tr. 565-566.

Accordingly, objections were made and the judge did not strike the question. And nowhere did the judge instruct the jury not to consider the prosecutor's accusatorial question.

CONCLUSION

Even if the circumstantial evidence against petitioner sufficed to support the conviction, it nonetheless was somewhat thin. The prejudicial accusation—unproved as to petitioner—may have tipped the balance of the scales against him. For that reason we pray that this petition for certiorari be granted.

Respectfully submitted,

JULIUS LUCIUS ECHELES
Attorney for Petitioner

APPENDIX "A"

In the

United States Court of Appeals

For the Seventh Circuit

SEPTEMBER TERM 1969 — APRIL SESSION 1970

No. 18056

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

PETER KARIGIANNIS, CHRIST PANAGIOTOPOULOS AND ARTHUR PANAGIOTOPOULOS,
Defendants-Appellants.

Appeal from the United States District Court, Northern District of Illinois Eastern Division.

JULY 8, 1970

Before CLARK, *Associate Justice, Retired,*[1] and CUMMINGS and KERNER, *Circuit Judges.*

[1] The Honorable Tom C. Clark, Associate Justice, United States Supreme Court, Retired, is sitting by special designation.

CLARK, *Associate Justice, Retired.* Appellants stand convicted of violating 18 U.S.C. § 1952[2] which makes it an offense to travel in interstate commerce to promote extorting. The jury found appellants guilty of travelling from Chicago, Illinois, to Milwaukee, Wisconsin, with intent to extort $2000 from Steve Latson in violation of Ch. 38 of the Illinois Revised Statutes, 16-1. The gist of the offense was that the appellants would refrain from having Latson's "Hollywood Restaurant" in Chicago bombed and burned on payment of the money. On this appeal appellants raise various questions;[3] however, we have concluded that none have merit and affirm the judgments.

I.

We will first describe the parties involved. The principal witness and the victim of the extortionate conduct is Steve Latson who owns the Hollywood Restaurant in Chicago. Appellant Arthur Panagiotopoulos, also known

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[2] 18 U.S.C. 1952 provides: (a) whoever travels in interstate commerce with intent to commit any crime of violence (2) to further any unlawful activity shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means "(3) extortion * * * in violation of the laws of the State in which committed or of the United States."

[3] The claimed errors include: (1) the relevant Illinois statute does not prohibit extortion; (2) the indictment failed to allege the extortion attempt to be a felony or misdemeanor; (3) the evidence against Arthur Panos was insufficient; (4) the judge and prosecutor made prejudicial remarks about appellants before the jury; (5) the court refused to admit into evidence a letter from a bank summarizing appellant Karigiannis' loan record; and (6) certain rebuttal evidence of the government exceeded impeachment bounds.

as Panos, is the owner of the Forest Glen Restaurant in Chicago and was for 6½ years a partner of Latson in the restaurant business. Appellant Christ Panagiotopoulos is a brother of Arthur and owns the Medium Rare Steak House in Milwaukee. Appellant Peter Karigiannis owns Pete's Snack Shop in Chicago.

II.

The facts are bizarre. Christ Panos called Latson, who was in Chicago, by telephone from Milwaukee. He told him that he was Arthur Panos' brother and Latson's friend; that Latson's life was in danger; that his Hollywood Restaurant was going to be blown to pieces before ten o'clock that night unless he came to his restaurant in Milwaukee by six p.m.; and that Latson had something to do with burning down a competing restaurant in Chicago, known as Mitchell's, some time previously. Latson told Christ that he could not come because he had no one to take care of his restaurant in his absence.

Upon completion of the call, however, Latson called Arthur Panos at his restaurant in Chicago. He told Arthur of his brother's call, adding: "they think, you know, that I had something to do with the bombing of Mitchell's place." Arthur then told Latson that he had heard something about it in Milwaukee the week previous but did not believe it. He said he would call his brother in Milwaukee and find out "what it is all about." Later Arthur called Latson back and advised that he had called his brother, Christ, and "you had better get ready, we are going to go up there." Latson replied that "he was afraid, I can't go up there and I don't have anybody to leave here." Arthur then told Latson: "If you are not going to go that is your job. I am going to come over and if you desire to go there we will go together."

About 4:30 on the same day, Arthur Panos came by Latson's restaurant and they drove to Christ Panos' restaurant in Milwaukee. Conversations then took place between Latson, the Panos brothers and Peter Karigiannis, during which Karigiannis accused Latson of having had Mitchell's restaurant bombed and burned; that Mitchell's owner had offered them $7000 to bomb and burn Latson's places. The first demand of Peter was for $7000 which later was reduced to $5000 and finally the $2000 payment was agreed upon to prevent the destruction of the restaurant. The money was to be paid to Peter Karigiannis on the following Friday at Arthur Panos' restaurant in Chicago. Nine agents of the Federal Bureau of Investigation carried on a surveillance of the restaurant and surroundings before, during and after this meeting.

After the meeting Arthur Panos and Latson returned to Chicago. On the following day Latson obtained the $2000 from a bank and took it to the FBI where it was identified, marked and placed in a white envelope for delivery by Latson to Peter on the next day. The payment was made on schedule and Peter was arrested by the agents, who were on hand at the time and seized the envelope before it was opened.

III.

The Panos brothers are represented by separate counsel and raise different questions from those raised by Peter Karigiannis. However, we shall consider the questions as if raised together.

1. At the outset appellants contend that Illinois does not have a statute prohibiting extortion. It is true that

Chapter 38, § 16-1[1] is written in terms of "theft" which is committed where one (e) obtains by threat control over property of the owner. But the Supreme Court, through Chief Justice Warren, has foreclosed appellants' claim. In *United States v. Nardello*, 393 U.S. 286 (1969), the Chief Justice laid down the test under § 1952 to be "whether the particular State involved prohibits the extortionate activity charged." At 295. The Congress, the Court held, did not intend to restrict the coverage of the "Travel Act" by defining extortion with reference to state labels. It is sufficient if the act complained of is "prohibited by state law which would be generically classified as extortion . . .", at 290, and, therefore, encompassed in § 1952. We hold that Illinois Ch. 38, § 16-1 is such a law. Also see *United States v. Hughes*, 411 F.2d 461 (2d Cir. 1969).

2. It is further claimed that the indictment is insufficient because it failed to distinguish the unlawful extortion as being either a felony or a misdemeanor. However, the gravamen of a charge under § 1952 is the violation of federal law and "[r]eference to state law is necessary only to identify the type of unlawful activity in which the defendants intended to engage." *United States v. Rizzo*, 418 F.2d 71, 74 (7th Cir. 1969). The offense, as the court pointed out, "is the use of an interstate facility with intent to promote or further an unlawful activity in violation of state law." *Id.* Indeed, the court held that proof that a state law had actually been violated was not a necessary element of the offense. *Id.* at 80. Appellants confuse the offense with those where the value of the property stolen

[1] Chapter 38, Illinois Revised Statutes, Section 16-1: "A person commits theft when he knowingly: * * * (e) Obtains by threat control over property of the owner."

is an essential element of the crime, a requirement not necessary here since the amount of money involved is irrelevant. Cf. *United States* v. *Pearce*, 275 F.2d 318, 324 (7th Cir. 1960), and *United States* v. *Gordon*, 253 F.2d 177 (7th Cir. 1958).

3. Appellant Arthur Panos urges that the evidence against him was insufficient to support his conviction. He did not testify at the trial; however, he made sworn statements to Special Agents of the FBI which were before the jury. On careful review of all of the evidence considered in a light more favorable to the government, *United States* v. *Puma*, 229 F.2d 216 (7th Cir. 1956), we have concluded that it was sufficient. The evidence against Arthur was largely circumstantial and created credibility problems for the jury to resolve. It believed the government's witnesses. Questions of credibility have no bearing on the insufficiency of the evidence as a whole. *United States* v. *Wrobleski*, 105 F.2d 444, 449 (7th Cir. 1939), and are not for the reviewing court's decision. *Glasser* v. *United States*, 315 U.S. 60, 80 (1942); *United States* v. *Miles*, 401 F.2d 65 (7th Cir. 1968); *United States* v. *Coduto*, 284 F.2d 464, 466 (7th Cir. 1960).

In addition to the evidence heretofore related, other testimony involved Arthur Panos directly in the extortion plot. It was he to whom Christ Panos referred on his initial call to Latson that initiated the extortion conference; it was he who suggested and arranged that Latson go with him to Milwaukee to the conference; once there and in the presence of his brother and Peter Karigiannis, it was he who heard threats made again and again to Latson; however, he never objected but on the contrary when Peter demanded $5000, Arthur said, "I know Steve for a long time, he was my partner. He might not have

that kind of money now. . . .": it was he who alarmed Latson while the conference was going on by saying to him privately, "If they ask you to go in any other room, don't go. Stay over here where I can see you because I don't know what is going to happen to you"; it was he who suggested to Latson that if the latter was afraid to tell Peter Karigiannis whose business he (Latson) wanted blown up that Latson should give him, Arthur Panos, the name; and, on the return trip to Chicago after the conference it was he who told Latson he had better do what he was told [pay the $2000]. Finally, it was he who called long distance to his brother Christ in Milwaukee just 13 minutes after Peter Karigiannis was arrested at his premises. And we note also that he had no objection to the extortion money being paid over at his restaurant. It is for the jury, not for us, to weigh this testimony along with that of the Agents of the Bureau that Arthur Panos told them four different versions of the extortion plot. False exculpatory statements may, of course, be considered by the jury in determining guilt. *Wilson* v. *United States*, 162 U.S. 613, 620-621 (1896); *United States* v. *Riso*, 405 F.2d 134 (7th Cir. 1968). He first stated that at no time was he informed by Latson of any threat; he could not recall any of the conversations between his brother Christ, Peter Karigiannis, Latson and himself at the Medium Rare Steak House in Milwaukee; however, he did recall that no threats were made to Latson; and, finally, though he was aware of the $2000 payment he was unaware of why it was being paid. Again and again the record repeats exclamations by the Panos brothers that Latson is "our friend . . . my brother's ex-partner . . . my partner . . . I know for a long time"; still they failed him completely. Indeed, both contributed much to the effectuation of the plot. The record speaks out beyond a reasonable doubt to this effect.

4. The remainder of the points raised go to alleged prejudicial remarks by the prosecutor or the judge and the admissibility of evidence. As to the former in some instances no objection was made at the time; in others the court struck out the statements and instructed the jury not to consider them. In any event we find no statements of such a prejudicial nature that would require a new trial. As to the evidence question, appellants claim error over the refusal of the court to admit into evidence a letter from the Commercial Bank of Chicago to Peter Karigiannis summarizing his loan record with the bank. Obviously, the letter was not the best evidence to prove that Peter had at one time borrowed $2100 from the bank. *United States v. Ross*, 321 F.2d 61, 70 (2d Cir. 1963). The original records should have been offered. Indeed, the judge told counsel that he was "at liberty to bring in the books of record if you wish to do so." Strangely, counsel claimed this remark was an invitation to produce and, therefore, prejudicial. To us it merely indicated the proper approach the appellant might have taken. In any event the defense that the $2000 extortion payment was in fact the repayment of an earlier loan to Latson was before the jury in other evidence and was rejected by it. Nor do we find appellants' challenges of error to the admissibility of certain rebuttal evidence to have merit and they are denied.

The judgment is

AFFIRMED.

APPENDIX "B"

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. PETER S. KARIGIANNIS, et al., *Defendants-Appellants.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 18056

IT IS ORDERED by the Court that the petition for rehearing filed herein by Christ Panagiotopoulos and Arthur Panagiotopoulos on July 15, 1970, be and the same is hereby denied.

IT IS FURTHER ORDERED that the petition for rehearing filed herein by Peter Karigiannis on July 22, 1970, be and the same is hereby denied.

Entered: Thursday, August 6, 1970.

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No. 581

In the Supreme Court of the United States

OCTOBER TERM, 1970

ARTHUR PANAGIOTOPOULOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 581

ARTHUR PANAGIOTOPOULOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner, his brother, and Peter Karigiannis were convicted of having traveled to Milwaukee, Wisconsin from Chicago, Illinois with intent to extort $2,000 from one Latson in violation of 18 U.S.C. 1952. The court of appeals affirmed (Pet. App. A).

The essence of the extortionate conduct shown by the evidence was that the defendants obtained $2,000 from Latson in exchange for their promising to refrain from causing Latson's restaurant in Chicago to be bombed and burned.

404-536—70

In this Court, petitioner contends solely that his right to a fair trial was impaired because the prosecutor's questioning of Nick Karigiannis, a cousin of Peter Karigiannis, suggested "without any proof" that petitioner or his brother would harm Latson when they were released from jail. The court of appeals did not discuss this claim in detail, apparently deeming it of little substance. Pet. App. A 8.

The reason for this conclusion readily appears when the facts are more closely examined. Nick Karigiannis testified on direct examination in support of his cousin's defense that the $2,000 obtained from Latson was in repayment of a loan and not, as Latson had previously testified, in response to the defendant's threats to bomb and burn his restaurant. This testimony raised obvious issues of credibility, and on cross-examination, for the purpose only of impeaching Nick Karigiannis' credibility, the prosecutor was permitted to ask whether Nick recalled telling Latson at a meeting that the defendants would beat him up when they got out of jail. On petitioner's objection, the prosecutor represented that he would later show the basis for the question. Nick denied making the statement (see Pet. 5–6). Latson later testified on rebuttal that on two occasions after Peter Karigiannis had been arrested (once when his brother was present), Nick came to see Latson and asked, in substance, how Latson knew that he and his cousin would not hurt Latson and his family when Peter got out of jail, if he (Latson) did not say what they told him to say (Tr. 623, 625–626).

Petitioner's assertion that the prosecutor reneged on his promise to show the basis for his "accusatorial" cross-examination of Nick is thus unfounded. It is true that when Latson was recalled by the government to testify in rebuttal, he was not asked whether Arthur and Christ Panos had threatened to beat him up when they got out of jail (see Pet. 6). But the prosecutor had never promised to do that. The thrust of his question, which did not accuse petitioner or his brother of anything, had been whether Nick had told Latson that the defendants would subsequently beat him up, and his promise was to show the basis for that question on rebuttal. The record shows that he did so. There was thus no failure by the government to furnish evidentiary support for the prior cross-examination of Nick.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1970.